

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH I. DEANE, a single man,

Plaintiff,

vs.

PACIFIC FINANCIAL GROUP, INC.,
a Washington corporation; MEGAN P.
MEADE, an unmarried woman;
NICHOLAS B. SCALZO, a married man;
NICHOLAS B. SCALZO and EVA M.
SCALZO, a marital community; JAMES
C. MCCLENDON, a married man;
JAMES C. MCCLENDON and
JOAN A. MCCLENDON, a marital
community; GAETAN T. SCALZO, a
married man; GAETAN T. SCALZO and
SHERRIE SCALZO, a marital
community,

Defendants.

NO. 2:19-cv-00722-MJP

**STIPULATED PROTECTIVE
ORDER**

NOTING DATE: 1/29/20

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged:

(a) Medical records and health information;

(b) Financial and proprietary information and documents not in the public domain or subject to public disclosure;

(c) Confidential and/or proprietary information and documents regarding Defendant the Pacific Financial Group, Inc. including, but not limited to, such non-parties' finances, operations, clients, customers, vendors, business strategies, commercial relationships, and pricing s;

(d) Confidential and/or proprietary information and documents regarding non-parties including, but not limited to, such non-parties' finances, operations, clients, customers, vendors, business strategies, commercial relationships, and pricing;

(e) Personnel information and documents regarding employees other than Plaintiff.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all

1 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
2 conversations, or presentations by parties or their counsel that might reveal confidential material.

3 However, the protections conferred by this agreement do not cover information that is in
4 the public domain or becomes part of the public domain through trial or otherwise.

5 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

6 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
7 or produced by another party or by a non-party in connection with this case only for prosecuting,
8 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
9 categories of persons and under the conditions described in this agreement. Confidential material
10 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
11 that access is limited to the persons authorized under this agreement.

12 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
13 by the court or permitted in writing by the designating party, a receiving party may disclose any
14 confidential material only to:

15 (a) the receiving party’s counsel of record in this action, as well as employees
16 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

17 (b) the officers, directors, and employees (including in house counsel) of the
18 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
19 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
20 designated;

21 (c) experts and consultants to whom disclosure is reasonably necessary for this
22 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (d) the court, court personnel, and court reporters and their staff;

24 (e) copy or imaging services retained by counsel to assist in the duplication of
25 confidential material, provided that counsel for the party retaining the copy or imaging service
26

1 instructs the service not to disclose any confidential material to third parties and to immediately
2 return all originals and copies of any confidential material;

3 (f) during their depositions, witnesses in the action to whom disclosure is
4 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
5 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
6 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
7 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
8 under this agreement;

9 (g) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information.

11 4.3 Filing Confidential Material. Before filing confidential material or discussing or
12 referencing such material in court filings, the filing party shall confer with the designating party
13 or non-party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating
14 party or non-party will remove the confidential designation, whether the document can be redacted,
15 or whether a motion to seal or stipulation and proposed order is warranted. During the meet and
16 confer process, the designating party or non-party must identify the basis for sealing the specific
17 confidential information at issue, and the filing party shall include this basis in its motion to seal,
18 along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the
19 procedures that must be followed and the standards that will be applied when a party seeks
20 permission from the court to file material under seal. A party who seeks to maintain the
21 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),
22 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in
23 the motion to seal being denied, in accordance with the strong presumption of public access to the
24 Court’s files.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
3 or non-party that designates information or items for protection under this agreement must take
4 care to limit any such designation to specific material that qualifies under the appropriate
5 standards. The designating party or non-party must designate for protection only those parts of
6 material, documents, items, or oral or written communications that qualify, so that other portions
7 of the material, documents, items, or communications for which protection is not warranted are
8 not swept unjustifiably within the ambit of this agreement.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
10 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
11 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
12 and burdens on other parties) expose the designating party to sanctions.

13 If it comes to a designating party's attention that information or items that it designated for
14 protection do not qualify for protection, the designating party must promptly notify all other parties
15 that it is withdrawing the mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this
17 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
18 ordered, disclosure or discovery material that qualifies for protection under this agreement must
19 be clearly so designated before or when the material is disclosed or produced.

20 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
21 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
22 the designating party must affix the word "CONFIDENTIAL" to each page that contains
23 confidential material. If only a portion or portions of the material on a page qualifies for protection,
24 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
25 markings in the margins).

1 (b) Testimony given in deposition or in other pretrial proceedings: the parties
2 and any participating non-parties must identify on the record, during the deposition or other pretrial
3 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
4 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
5 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
6 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
7 at trial, the issue should be addressed during the pre-trial conference.

8 (c) Other tangible items: the producing party or non-party must affix in a
9 prominent place on the exterior of the container or containers in which the information or item is
10 stored the word "CONFIDENTIAL." If only a portion or portions of the information or item
11 warrant protection, the producing party or non-party, to the extent practicable, shall identify the
12 protected portion(s).

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
14 designate qualified information or items does not, standing alone, waive the designating party's
15 (or non-party's) right to secure protection under this agreement for such material. Upon timely
16 correction of a designation, the receiving party must make reasonable efforts to ensure that the
17 material is treated in accordance with the provisions of this agreement.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
20 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
21 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
22 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
23 challenge a confidentiality designation by electing not to mount a challenge promptly after the
24 original designation is disclosed.

25 6.2 Meet and Confer. The parties (or, as applicable, non-parties) must make every
26 attempt to resolve any dispute regarding confidential designations without court involvement. Any

1 motion regarding confidential designations or for a protective order must include a certification,
2 in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and
3 confer conference with other affected parties (or, as applicable, non-parties) in an effort to resolve
4 the dispute without court action. The certification must list the date, manner, and participants to
5 the conference. A good faith effort to confer requires a face-to-face meeting or a telephone
6 conference.

7 6.3 Judicial Intervention. If the parties (or, as applicable, non-parties) cannot resolve a
8 challenge without court intervention, the designating party (or non-party) may file and serve a
9 motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule
10 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party.
11 Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose
12 unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions.
13 All parties shall continue to maintain the material in question as confidential until the court rules
14 on the challenge.

15 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
16 LITIGATION

17 If a party is served with a subpoena or a court order issued in other litigation that compels
18 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
19 must:

20 (a) promptly notify the designating party or non-party in writing and include a
21 copy of the subpoena or court order;

22 (b) promptly notify in writing the party who caused the subpoena or order to
23 issue in the other litigation that some or all of the material covered by the subpoena or order is
24 subject to this agreement. Such notification shall include a copy of this agreement; and

25 (c) cooperate with respect to all reasonable procedures sought to be pursued by
26 the designating party whose confidential material may be affected.

1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
3 material to any person or in any circumstance not authorized under this agreement, the receiving
4 party must immediately (a) notify in writing the designating party (or non-party) of the
5 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected
6 material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
7 terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment
8 and Agreement to Be Bound” that is attached hereto as Exhibit A.

9 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
10 MATERIAL

11 When a producing party or non-party gives notice to receiving parties that certain
12 inadvertently produced material is subject to a claim of privilege or other protection, the
13 obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure
14 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in
15 an e-discovery order or agreement that provides for production without prior privilege review. The
16 parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

17 10. NON TERMINATION AND RETURN OF DOCUMENTS

18 Within 60 days after the termination of this action, including all appeals, each receiving
19 party must return all confidential material to the producing party or non-party, including all copies,
20 extracts and summaries thereof. Alternatively, the parties and/or non-parties may agree upon
21 appropriate methods of destruction.

22 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
23 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
24 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
25 product, even if such materials contain confidential material.

1 The confidentiality obligations imposed by this agreement shall remain in effect until a
2 designating party or non-party agrees otherwise in writing or a court orders otherwise.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 DATED: JANUARY 29, 2020

5 By: /s/ Nicole E. Demmon
6 David W. Silke, WSBA #23761
7 Nicole E. Demmon, WSBA #45322
8 Michael C. Tracy, WSBA #51226
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17 **Attorneys for Defendants:**

18 Pacific Financial Group, Inc.;
19 Megan P. Meade; Nicholas B. Scalzo and
20 Eva M. Scalzo; James C. McClendon and
21 Joan A. McClendon; and Gaetan T. Scalzo
22 and Sherrie Scalzo

23 DATED: JANUARY 29, 2020

24 By: s/ Jon H. Rosen
25 Jon H. Rosen, WSBA #7543
26 The Rosen Law Firm
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Seattle, WA 98104
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Attorney for Plaintiff:

Kenneth I. Deane

27 PURSUANT TO STIPULATION, IT IS SO ORDERED

28 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
29 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
30 state proceeding, constitute a waiver by the producing party or non-party of any privilege
31 applicable to those documents, including the attorney-client privilege, attorney work-product
32 protection, or any other privilege or protection recognized by law.

1
2 DATED: January 30, 2020
3

4 
5

6 Marsha J. Pechman
7 United States Senior District Judge

8 By: s/ David W. Silke

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on [date] in the
7 case of Kenneth Deane v. The Pacific Financial Group, Inc., et al., NO. 2:19-cv-00722-MJP. I
8 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
9 understand and acknowledge that failure to so comply could expose me to sanctions and
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
11 any information or item that is subject to this Stipulated Protective Order to any person or entity
12 except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the limited and exclusive purpose of enforcing the terms of
15 this Stipulated Protective Order, even if such enforcement proceedings occur after termination of
16 this action.

17 Date: _____

18 City and State where sworn and signed: _____

19 Printed name: _____

20 Signature: _____